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Revised Guidelines for audio/video communications and social media by State Officers

Under IC 4-2-6-15, a state officer may not use the state officer's name or likeness in a *communication* paid for entirely or in part with appropriations made by the general assembly, regardless of the source of the money.

"Communication" refers to the following:

- (1) An audio communication
- (2) A video communication
- (3) A print communication in a newspaper

The General Assembly recently passed an amendment to IC 4-2-6-15 and added IC 4-2-6-15.5 as part of HEA 1001, the State Budget bill. Governor Holcomb signed the bill into law on April 29, 2019. The new language was effective upon passage.

The amendment to IC 4-2-6-15 creates new exceptions to the prohibition on a state officer using his or her name or likeness in a communication paid for with state funds. It also changes the language interpreted by the State Ethics Commission in Formal Advisory Opinion [2019-FAO-004](#). The Commission's determination that the statute's language "paid for entirely or in part with appropriations made by the general assembly" extends to the use of any state funds remains substantially unchanged; however, the Commission's findings regarding digital media platforms are significantly altered by the new language.

Exceptions (new exceptions in italics below)

(1) This rule does not apply to the following:

- A communication made by the Governor concerning public health and safety.
- A communication for a compelling public policy that is approved by the budget agency after an advisory recommendation from the budget committee
- *A communication posted or maintained on a state owned Internet web site*
- *A communication that relates to the official duties of the state officer and that is not made for commercial broadcast or dissemination to the general public*
- *Information posted on social media if the information relates to the official duties of the state officer*
 - *But a state officer may not use state funds to post information on social media if the social media service provider requires payment for the posting and may not pay a nongovernmental entity to create, develop, or post information on social media if the post includes the name or likeness of the state officer.*

(2) This rule does not prohibit a state officer from using the title of the office the state officer holds in a communication.

FAQs

Can a state officer use his or her name and/or likeness on the state officer's digital media account?

Yes, the state officer can use his or her name and/or likeness on the state officer's digital media accounts, even if audio or visual communications are posted on the platforms. Information posted on a state officer's platforms must relate to the official duties of the state officer and can contain the state officer's name and/or likeness.

Is a video communication created by a state officer's staff using state-issued smartphones or cameras permitted if the video includes the state officer's name or likeness?

Yes, a video communication created by a state officer's staff and using state equipment is permitted so long as the communication is posted or maintained on a state owned Internet site; relates to the official duties of the state officer and is not made for commercial broadcast or dissemination to the general public; or is posted on the state officer's social media accounts.

Would a video communication that contains the state officer's name/likeness produced by the state officer's outside vendor be permitted to be posted on the state officer's digital media accounts?

No, the new language in IC 4-2-6-15.5 prohibits a state officer from paying a nongovernmental entity to create, develop, or post information on social media, if the post includes the name or likeness of the state officer, with an exception for ancillary or *de minimus* expenses incurred in posting information on social media.

Can the state officer's agency post a video communication produced by an outside entity, such as a media outlet, that was not paid for by the State but does contain the state officer's name/likeness on a state officer's digital media accounts?

Yes, the video communication is not paid for with state appropriations, and IC 4-2-6-15.5 allows a state officer to use state funds to post information on social media if the information relates to the official duties of the state officer.

Can the state officer's digital media accounts include a video communication that contains the state officer's name or likeness if the video communication is posted by someone outside of state government?

Yes, this communication is likely not paid for using state funds. Even if state funds are used to create, develop or post the information, the communication is permissible so long as the information relates to the official duties of the state officer.